

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1182

~~REDACTED~~

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

WILLIAM J. JOYCE, DONALD WALSH, JAMES
GRIMSLEY, JANET TERRI and LOUIS BOVELL,

Defendants-Appellants.

*On Appeal from the United States District Court for the Eastern
District of New York.*

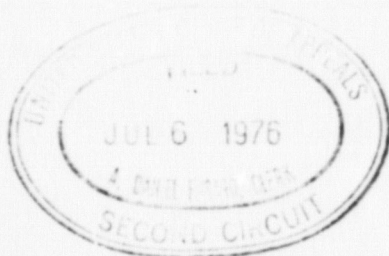
**JOINT APPENDIX FOR DEFENDANTS-
APPELLANTS JOYCE, WALSH, GRIMSLEY
and BOVELL**

THOMAS J. O'BRIEN

*Attorney for Defendant-Appellant
Grimsley*

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New York, New York 10001
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(Cont'd)



(9661)

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TABLE OF CONTENTS

	Page
Docket Entries 75 Cr 488	1a
Docket Entries 75 Cr 975	8a
Indictment 75 Cr 488	10a
Indictment 75 Cr 975	13a
Courts Charge to the Jury	14a

AL DOCKET

75 CR 488

TITLE OF CASE

THE UNITED STATES

VS.

X WILLIAM J. JOYCE,

X DONALD WALSH,

X EDWARD J. BOYLE,

X THOMAS M. BURNS,

X JAMES GRIMSLEY,

X LEONARD NITTI,

X JANET TERRI aka Janet Ferry

X ROBERT SCHOENLY,

+ PETER AREITER,

X LOUIS BOVELL,

X JOHN FREUDIGER

X MORTON HANAN

For U.S. District

for deft. BOVELL

William J. Joyce

125-10 Queens Blvd

Kew Gardens, NY 11424

for deft. SCHOENLY

Peter Passaniti

32 Court St.

852-2634

For Defendant: GRIMSLEY

Court aptd commr:

Charles P. Murphy nos. 0 Brie

250 W. 57th Street N.Y. - N

10019 - 586-3830

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine, (Nitti)

2500 00

4-9-76

Notice of Appeal/William

1.5

Fine, fine Bovell

4000 00

4-12-76

Paid to Treas J. JOYCE

Fine, " Walsh

10000 00

Fine, " Terri

10000 00

Fine, " Joyce

10000 00

Fine, Supreme's Court, Hanan

1,000 00

Fine, fine SCHOENLY

2,500 00

Fine, fine (AREITER)

3000 00

DATE

PROCEEDINGS

6-16-75 Before JUDD, J - Indictment filed.

6/20/75 Before PLATT, J. - Case called - D. and counsel present - Defts arraigned and each enter plea of not guilty - bail set at \$5,000.00 P.R. Bond for defts Burns, Nitti and Schoenly - case adjd to 7/18/75 to set trial date - bail contd as to all defts

6/20/75 Notice of appearance filed (GRIMSLEY)

6-27-75 By PLATT, J - Order filed appointg counsel for deft BOVELL.

6-27-75 By PLATT, J - Order filed apptg counsel for deft SCHOENLY.

7-3-75 Before PLATT, J - case called - deft FERRARI & counsel present -

deflt arraigned and after being advised of her rights enters a plea of not guilty; adjd to 7-18-75 - Bail set at \$5000 P.R.B. Deflt WALSH arraigned and after being advised of his rights enters a plea of not guilty - adjd to July 18, 1975 for all purposes as to deflt JOYCE and

BEST COPY AVAILABLE

75CR 488

2a

DATE	PROCEEDINGS
7/1/75	Before PLATT, J. - Case called - Motion to admit atty to practice for this case-decision reserved - Motion to permit Gustave Newman as N.Y. counsel to represent atty Voncent Verdiramo - motion granted
7/8/75	Notice of motion for inspection, bill of particulars, etc. filed ret. 7/18/75 (WALSH, TERRI)
7/11/75	75 M 1096, 75 M 1097, 75 M 1098, 75 M 1099, 75 M 1100, 75 M 1101, 75 M 1103, 75 M 1104, 75 M 1135, 75 M 1136, 75 M 1137 are inserted in CR
7-15-75	Notice of Motion filed, ret. July 18, 1975, for Bill of Particulars, Inspection (deft Bovell)
7/16/75	Govt's bills of particulars(2), and response to motion by deft Walsh ^{Schoenly} filed
7/17/75	Notice of readiness for trial filed
7/17/75	Govt's response to omnibus motion of deft Bovell ^{filed}
7/18/75	Notice of motion for bill of particulars filed ret. 7/25/75 ^{reopened}
7-18-75	Before PLATT, J - case called - defts motion for Discovery withdrawn (Walsh); Motion for Discovery (defts Bovell & Joyce) adjd without date.
7-18-75	Before PLATT, J - case called - defts & attys present - defts BOYLE, BURNS, NITTI, SCHOENLY, A. LITER arraigned and after being advised of their rights by the court enters pleas of Guilty as follows: Boyle, plea of guilty to count 2; deft Burns, ^{Nitti, Schoenly and Arter} all enter pleas of guilty to count 1; sentences adjd without date - adjd to Oct. 13, 1975 to set a date for trial as to the remaining defts.
9-23-75	Before PLATT, J - case called - Charles Murphy relieved as counsel for deft GRIMSLEY - Thomas O'Brien appointed as counsel for the deft - set down for Oct. 3, 1975 to set a trial date.
9-25-75	By PLATT, J - Order filed apptg counsel for deft Donald Walsh (signed by Judge Platt on July 3, 1975 but forwarded for filing 9-26-75)
10-3-75	Before PLATT, J - case called - adjd to Oct. 24, 1975 @10:00 am for trial.
10-24-75	Before PLATT, J - case called - defts & counsels present - adjd to 1-19-76 for trial
1-6-76	Before PLATT, J - case called - motion for investigator - no opposition motion granted. (John Freudiger)
1-7-76	By PLATT, J. - Order filed appointing counsel (GRIMSLEY) (order in 75CR975)
1-7-76	Before PLATT, J - case called - deft Grimsley & counsel TO'Brien present - deft arraigned and enters a plea of not guilty - bail contd

DATE	PROCEEDINGS
1-19-76	Before PLATT, J - case called - trial ordered and begun - Jurors selected and sworn - Trial contd to Jan. 20, 1976.
1-20-76	Before PLATT, J - case called - trial resumed - Trial contd to Jan. 21, 1976.
1-21-76	Before PLATT, J - Case called. Trial resumed. Trial continued to 1-22-76
1/22/76	Before PLATT, J. - Case called- Trial resumed- Deft Freudiger's Motion to Suppress Motion argued- Motion denied- Hearing concluded- Trial resumed- Trial cont'd to 1/26/76
1/23/76	By PLATT, J. - Order dated 1/17/76 filed appointing counsel (ATTY- PAUL E. WARBURGH)
1/26/76	Before PLATT, J. - Case called- defts and counsel present- Trial resumed, deft Joyce, Walsh, Grimsley, Ferry and Bovall motion to suppress denied- contd to 1/27/76
1/26/76	<u>SUPERSEDING INFORMATION FILED (JOHN FREUDIGER and MORTON HANAN)</u>
1/26/76	Before PLATT, J. - Case called- defts Freudiger and Hanan after being advised of their rights by the court and on their own behalf enter plea of guilty- to the superseding information- bail contd- sentence adjd with date
1/26/76	Notice of appearance filed (RMA)
1/27/76	Before PLATT, J. - Case called- defts and counsel present- trial resumed trial contd to 1/28/76
1/27/76	Voucher for expert services filed
1-28-76	Before PLATT, J - case called - trial resumed - Each deft renews motions to dismiss denied as to each deft - trial contd to 1-29-76.
1-29-76	7 volumes of stenographers transcripts filed (pgs 1 to 1442)
1-29-76	By Platt, J - Order of sustenance filed.
1-29-76	Before PLATT, J - case called - trial resumed - Jury returns with a verdict of guilty as to counts 1 and 2 - for defts JOYCE, WALSH, TERRI, BOVELL & not guilty on count 1 as to deft GRIMSLEY and guilty on count 2 as to deft GRIMSLEY - sentences adjd without date - bail contd as to each deft - deft WALSH to make motions 2-20-76 at 11:30 am - all other defts to make motions on sentence date - Jury discharged - trial concluded.
1/29/76	By PLATT, J. - Judgment of acquittal filed (GRIMSLEY)
2-3-76	Voucher for compensation of expert services filed.
2-6-76	Voucher for Expert Services filed (Anthony Spiesman.)

PROCEEDINGS

DATE	PROCEEDINGS
2-11-76	Stenographers transcript dated Jan 29, 1976 filed
3-10-76	Voucher for Expert Services filed (Freudiger)
3-26-76	Before PLATT, J - case called - deft Nitti & counsel A. Nantre present - deft is sentenced to imprisonment for 3 years - execution of sentence is suspended and deft is placed on probation for 3 years under 18:5010(a). deft to pay a fine in the sum of \$2,500. Fine paid during the probation period.
3-26-76	Judgment & Order of probation filed - certified copies to Probation (NITTI)
2-76	Letter filed dated 3-30-76 from counsel T.O'Brien requesting sentence date be adjd to April 23, 1976 as to deft Grimsley.
4-9-76	Before PLATT, J - case called - defts FREUDIGER, WALSH, JOYCE, TERRI & BOVELL present with attys - Deft FREUDIGER sentenced under 18:3651 to imprisonment for 1 year - to be confined for 6 months and execution of remainder of sentence is suspended and the deft is placed on probation (on superseding information) for 3 years. On motion of AUSA Kimelman the indictment is dismissed.
4-9-76	Judgment and Order of probation filed - certified copies to Probation (FREUDIGER)
4-9-76	By PLATT, J - Order of Dismissal filed (FREUDIGER)
4-9-76	Before PLATT, J - Deft TERRI & BOVELL are sentenced to imprisonment (et. 2) (et. 1) for 3 years under 18:3651 - to serve 6 months and execution of balance of the sentence is suspended as to each deft and defts are placed on probation for 3 years. Deft TERRI is fined the sum of \$5,000 on count 1 and the sum of \$5,000 on count 2, total fine of \$10,000 under both counts. Deft TERRI is sentenced on count 1 to imprisonment for 3 years - to serve 6 months and execution of balance of sentence is suspended and deft is placed on probation for 3 years. Sentence to be served concurrent with count 2. Deft BOVELL is sentenced on count 2 to imprisonment for 3 years to serve 6 months and execution of remainder of sentence is suspended and the deft is placed on probation for 3 years - deft to pay fine of \$2,000 for total fine of \$4,000 under both counts, such sentence to be served concurrently with count 1. Bail contd pending appeal, Appeals forms issued. Court directs Clerk to file Notice of Appeal without fee as to deft JANET TERRI. Bail contd pending appeal. Deft BOVELL sentenced on count 1 to imprisonment for 3 years - to serve 6 months and execution of remainder of sentence is suspended and deft is placed on probation for 3 years and deft to pay a fine of \$2,000; deft sentenced on count 2 to imprisonment for 3 years - to serve 6 months and execution of balance of

CRIMINAL DOCKET

5a

DATE	PROCEEDINGS
	sentence is suspended and the deft is placed on probation for 3 years, and deft to pay a fine of \$2,000 for a total fine of \$4,000 under both counts, such sentence to be served concurrently with count 1. Appeal forms issued - bail contd pending appeal.
4-9-76	Judgment ^{& commitment} and Order of Probation filed - certified copies Probation (BOVELL.) and Marshal.
4-9-76	Before PLATT, J -Deft JOYCE is sentenced on count 2 for a term of imprisonment of 8 years and shall become eligible for parole under 18:4208(a)(2) at such time as the Board of Parole may determine and shall pay a fine of \$5,000; on count 1 deft is sentenced to imprisonment for 4 years under 18:4208(a)(2) such sentence to run concurrently with sentence imposed on count 2; deft to pay a fine of \$5,000 for a total fine of \$10,000 on both counts; Appeals forms issued - bail contd pending appeal. Deft WALSH sentenced on count 2 to imprisonment for 5 years under 18:4208(a)(2) and to pay a fine of \$5,000; and sentenced to imprisonment for 4 years under 18:4208(a)(2) - such sentence to run concurrently with sentence under count 2; deft to pay a fine of \$5,000 for a total fine of \$10,000 under both counts. Court directs Clerk to file Notice of Appeal without fee as to deft WALSH. Bail contd pending appeal.
4-9-76	Judgment ^{and Commitment} and Order of Probation filed -certified copies to Marshal and Probation (JOYCE & WALSH)
4-9-76	Notice of Appeal filed for defts. TERRI & WALSH. (no fee)
4-9-76	Docket entries and duplicate of Notice mailed to the Court of Appeals.
4-9-76	Notice of Appeal filed (JOYCE) no fee
4-9-76	Docket entries and duplicate of Notice mailed to the C of A.
4-13-76	Notice of Appeal filed (BOVELL)
4-13-76	Docket entries and duplicate of Notice mailed to the C of A
4/16/76	Record on appeal certified and mailed to court of appeals
/21/76	Record Acknowledgment received from court of appeals for receipt of record
/21/76	Voucher for compensation of counsel filed (TERRI)
/23/76	Before PLATT, J.- Case called- deft and counsel present- deft HANAN sentenced pursuant to T-18, U.S.C. Sec. 3651 for imprisonment for a period of 1 year on condition that the deft be confined in a jail-type

DATE

PROCEEDINGS

institution for a period of 3 months, execution of remainder of sentence of imprisonment is suspended and the deft is placed on probation for a period of 3½ years- and deft fined \$1,000.00- execution of sentence stayed t 5/3/76 at 10:00 A.M.- On motion of A.U.S.A. Kimelman the underlying indictment is dismissed- deft BURNS sentenced as follows: court finds that the deft was 24 years of age at date of conviction and is suitable for handling under the Federal Youth Correction Act as a young adult offender- T-18, U.S.C. Sec. 4209- deft sentenced pursuant to T-18, U.S.C. Sec. 3651 on count 1 for treatment and supervision at a Yotuh Correction Center for a period of 5 years- execution of sentence is suspended and the deft is placed on probation for 3½ years under T-18, U.S.C. Sec. 5010(a) of the Y.C.A.- On motion of A.U.S.A. Kimelman count 2 is dismissed- deft SCHOENLY sentenced pursuant to T-18, U.S.C. Sec. 3651 on counts 1 for a period of 5 years- execution of sentence suspended and the deft is placed on probation for 5 years- deft fined \$2,500.00; said fine to be paid during period of probation. On motion of Assistant U.S. Attorney Kimelman counts 2 is dismissed

23/76 Judgments and Commitments and Orders of Probation filed- certified copies to Marshal and Probation (SCHOENLY, BURNS and HANAN)

26-76 Judgment & Commitment ret'd and filed - deft delivered to Warden, MCE (FREUDIGNER)

4-27-76 Voucher for compensation of atty filed (deft Schoenley) P. Passalacqua, Esq

4-29-76 Voucher for compensation of atty filed (Bovell)

5/76 Before PLATT, J.- Case called- deft and counsel present- execution of sentence stayed for 1 week on consent (HANAN)

5-76 Voucher for compensation of atty filed Thomas O'Brien (deft Grimsley)

5-76 Notice of motion to modify sentence (Hanan) received from Chambers

5-76 By PLATT, J - Memorandum and Order filed denied - deft is directed to surrender to the U.S. Marshal of this District on May 10, 1976 @ 10:am.

10/76 Notice of motion to be relieved as counsel filed (JOYCE)

7-76 Before PLATT, J - case called - deft ARBEITER & counsel J. Dillon present - deft sentenced to imprisonment for 5 years, execution of sentence is suspended and deft is placed on probation for 5 years and is fined the sum of \$3,000. (on count 1) motion of AUSA Kimelman count (2) is dismissed. Deft BOYLE & counsel E. Kelly present - deft is sentenced to imprisonment on count 2 for 4 years on condition that he be confined in a jail-type institution for 2 months, execution of the remainder of sentence of confinement is hereby suspended and the deft is placed on probation for 4 years. On motion of AUSA Kimelman count 1 is

dismissed.

D. C. 102

DATE	IV. PROCEEDINGS (continued)	V. SUPPLEMENTAL PROCEEDINGS
4/23/76	Before PIATT, J.- Case called- deft and counsel present. Deft's motion to set aside verdict denied- deft sentenced pursuant to T-18, U.S.C. Sec. 3651 to imprisonment for a period of 3 years on condition that deft be confined in a jail-type institution for a period of 2 months, execution of remainder of sentence is suspended and the deft placed on probation for 3 years.	
4/23/76	Judgment and Commitment and Order of Probation filed certified copies to Probation and Marshal	
4/23/76	Notice of appeal without fee filed	
4/23/76	Docket entries and duplicate of notice of appeal mailed to court of appeals	
5/3/76	Order received from court of appeals and filed that record be filed on or before 5/10/76	
5-5-76	Voucher for compensation of counsel filed	

INDICTMENT 75 CR 488

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

10a

- - - - - X

UNITED STATES OF AMERICA

- against -

WILLIAM J. JOYCE,
DONALD WALSH,
EDWARD J. BOYLE,
THOMAS M. BURNS,
JAMES GRIMSLEY,
LEONARD NITTI,
JANET TERRI, also known as
Janet Ferry,
ROBERT SCHOENLY,
PETER ARBITER,
LOUIS BOVELL,
JOHN FREUDIGER
MORTON HANAN,

I N D I C T M E N T

Cr. No. _____
(T. 18, U.S.C., § 371,
§ 659 and § 2)

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 17th day of March 1975 and the 27th day of March 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JAMES GRIMSLEY, LEONARD NITTI, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER ARBITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN did knowingly, intentionally and wilfully combine, conspire, confederate and agree, together with Barbara Carson, named as a co-conspirator but not as a defendant herein, and with others, to commit an offense against the United States in violation of Title 18, United States Code, Section 659 and Section 2, to wit, to knowingly and wilfully receive and have in their possession approximately One Hundred Seventeen (117) cartons of Torex watches, having a value of approximately Eight Hundred Thirty Thousand Dollars (\$830,000.00), which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York on March 17, 1975, while moving as a part of a foreign shipment of freight from Taipei, Taiwan to Queens, New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD

Indictment 75 CR 488

11a

J. BOYLE, THOMAS M. BURNS, JAMES GRIMSLEY, LEONARD NITTI, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN then knowing the said goods to have been stolen.

In furtherance of said conspiracy and to effect the objectives thereof, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JAMES GRIMSLEY, LEONARD NITTI, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN and the unindicted co-conspirator Barbara Carson committed the following:

O V E R T A C T S

1. On or about March 17, 1975, the defendants DONALD WALSH, THOMAS M. BURNS, PETER AREITER, LOUIS BOVELL and MORTON HANAN met at Lynbrook, New York.
2. On or about March 21, 1975, the defendant JANET TERRI, also known as Janet Ferry, made a telephone call to Hub Truck Rental Company.
3. On or about March 21, 1975, the defendant ROBERT SCHOENLY rented a truck.
4. On or about March 24, 1975, the defendants WILLIAM J. JOYCE, THOMAS M. BURNS and LEONARD NITTI met at Lynbrook, New York.
5. On or about March 27, 1975, the defendants WILLIAM J. JOYCE, EDWARD J. BOYLE, THOMAS M. BURNS and JAMES GRIMSLEY and unindicted co-conspirator Barbara Carson met at Brooklyn, New York. (Title 18, United States Code, Section 371)

COUNT TWO

On or about and between the 17th day of March 1975 and the 27th day of March 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN did willingly and unlawfully receive and have in their possession approximately One Hundred Seventeen (117)

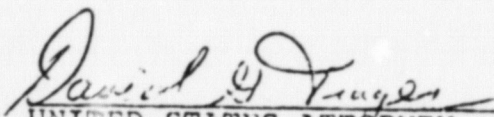
Indictment 75 CR 488

12a

cartons of Timex watches, having a value of approximately Eight Hundred Thirty Thousand Dollars (\$830,000.00), which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York on March 17, 1975, while moving as a part of a foreign shipment of freight from Taipei, Taiwan to Queens, New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN then knowing the said goods to have been stolen. (Title 18, United States Code, Section 659 and Section 2)

A TRUE BILL

FOREMAN


UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

INDICTMENT 75 CR 975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

13a

Platt &

----- X

UNITED STATES OF AMERICA

- against -

JAMES GRIMSLEY,

Defendant.

INDICTMENT

Cr. No. 75 CR 975
(T. 18, U.S.C., 5659 and 52)

12-22-75

----- X

THE GRAND JURY CHARGES:

On or about and between the 17th day of March 1975 and the 27th day of March 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendant JAMES GRIMSLEY, did willingly and unlawfully receive and have in his possession approximately One Hundred Seventeen (117) cartons of Timex watches, having a value of approximately Eight Hundred Thirty Thousand Dollars (\$830,000.00), which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York on March 17, 1975, while moving as a part of a foreign shipment of freight from Taipei, Taiwan to Queens, New York, the defendant JAMES GRIMSLEY then knowing the said goods to have been stolen. (Title 18, United States Code, Sections 659 and 2)

A TRUE BILL

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY

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4
MR. VERDIRAMO: Also what onus does a defendant have? What onus does that have on the defendants who haven't testified?

5
6
MR. KIMELMAN: No.

7
8
MR. VERDIRAMO: The jury will say, well, why didn't the others get on the stand.

9
10
THE COURT: It is not a supposition of a burden on them to testify.

11
12
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14
MR. VERDIRAMO: But there is going to be some doubt as to why they didn't testify. It is a question that they will have in their minds at the beginning. Why add fuel to the fire? I think 3 and 4 are totally prejudicial.

15
16
17
18
MR. O'BRIEN: I think United States v. Fields, Nitti, United States v. Cangiano are all opposite to that charge. And they are all Second Circuit cases, also.

19
20
THE COURT: All right. Are they ready? Let's bring them in.

21
22
(Whereupon, the jury entered the jury box.)

23
24
25
THE COURT: Now, ladies and gentlemen of the jury, I am going to give you the instructions on the law in this case. It is my practice to read the instructions to you. I do this principally so that

1 the errors will be kept to a minimum.

2 I realize it is more difficult for you to follow
3 in this fashion and requires greater attention on your
4 part. But they are not that hard to follow. If you
5 listen and pay close attention, I think you will
6 understand all of the instructions.

7 If my voice drops at all and you can't hear
8 any portion of it, let me know by raising your hand
9 or making some noise so that the -- I want to make
10 sure you do hear all of the instructions.

11
12 (continued next page)
13
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1
2 Now that you have heard the evidence and the
3 argument, it becomes my duty to give the instructions
4 of the Court as to the law applicable to the case.

5 It is your duty as jurors to follow the law as
6 stated in the instructions of the Court, and to apply
7 the rules of law, so given to the facts as you find
8 them from the evidence in the case.

9 You are not to single out one instruction alone
10 as stating the law, but must consider the instructions
11 as a whole.

12 Neither are you to be concerned with the
13 wisdom of any rule of law stated by the Court.
14 Regardless of any opinion you may have as to what the
15 law ought to be, it would be a violation of your sworn
16 duty to base a verdict upon any other view of the
17 law than that given in the instructions of the Court;
18 just as it would be a violation of your sworn duty,
19 as judges of the facts, to base a verdict upon anything
20 but the evidence in the case.

21 You must not permit yourself to be governed by
22 sympathy, bias, prejudice or any other considerations
23 not founded on evidence and these instructions on the
24 law.

25 Justice through trial by jury must always

1
2 depend upon the willingness of each individual juror
3 to seek the truth as to the facts from the same evidence
4 presented to all the jurors; and to arrive at a verdict
5 by applying the same rules of law as given in the
6 instructions of the Court.

7 You have been chosen and sworn as jurors in
8 this case to try the issues of fact presented by the
9 allegations of the indictment and the denial made by
10 the "not guilty" pleas of the accused. You are to
11 perform this duty without bias or prejudice as to any
12 party. Again, the law does not permit jurors to be
13 governed by sympathy, prejudice, or public opinion.
14 Both the accused and the public expect that you will
15 carefully and impartially consider all the evidence in
16 the case, follow the law as stated by the Court and
17 reach a just verdict regardless of the consequences.

18 Now, I am not going to send the exhibits which
19 have been received in evidence with you as you retire
20 for your deliberations. However, you are entitled to
21 see any or all of the exhibits as you consider your
22 verdict. I suggest that you begin your deliberations
23 and then, if it would be helpful to you, you may ask
24 for any or all of the exhibits simply by sending a
25 note to me through one of the deputy marshals who will

1 be stationed outside your jury room door.

2
3 Now, an indictment is but a form or method of
4 accusing a defendant of a crime. It is not evidence
5 of any kind against the accused.

6 The fact that this prosecution is brought in
7 the name of the United States of America does not
8 entitle the Government to any greater consideration
9 than any other litigant would get, but by the same
10 token, it is entitled to no less consideration. The
11 issues in this case must be decided on the evidence
12 and on the law. All parties, Government and individual,
13 stand alike as individuals before the bar of justice.

14 Now, there are two types of evidence from
15 which a jury may properly find a defendant guilty of
16 a crime. One is direct evidence -- such as the
17 testimony of an eyewitness. The other is circum-
18 stantial evidence -- the proof of facts and circum-
19 stances which rationally imply the existence or non-
20 existence of other facts because such other facts
21 usually follow according to the common experience of
22 mankind. Thus, by way of example the footprint of a
23 man in the sand implied to Robinson Crusoe that there
24 was another man with him on the desert island, and
25 indeed there was, the man Friday. Thus, on the one
hand, you may have

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2 direct evidence of the issues and on the other hand
3 you may have circumstantial evidence of the issue.
4 The law does not hold that one type of evidence is
5 necessarily of better quality than the other. The
6 law requires only that the Government prove its case
7 beyond a reasonable doubt both on the direct and
8 circumstantial evidence. At times, the jury might
9 feel that circumstantial evidence is of better quality.
10 At other times they may feel direct evidence is of
11 better quality. That judgment is left entirely to
12 you.

13 As a general rule, the law makes no distinction
14 between direct and circumstantial evidence, but
15 simply requires that, before convicting a defendant,
16 the jury be satisfied of the defendant's guilt
17 beyond a reasonable doubt from all the evidence in the
18 case.

19 Now, the law presumes the defendants to be
20 innocent of crime. Thus, a defendant, although
21 accused, begins the trial with a "clean slate" --
22 with no evidence against him or her. And the law
23 permits nothing but legal evidence presented before
24 the jury to be considered in support of any charge
25 against the accused. So the presumption of innocence

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2 alone is sufficient to acquit a defendant, unless the
3 jurors are satisfied beyond a reasonable doubt of the
4 defendant's guilt after careful and impartial
5 consideration of all the evidence in the case.

6 The burden is always upon the prosecution to
7 prove guilt beyond a reasonable doubt. This burden
8 never shifts to a defendant; for the law never imposes
9 upon a defendant in a criminal case the burden or duty
10 of calling any witnesses or producing any evidence.

11 Now, a reasonable doubt does not mean a doubt
12 arbitrarily and capriciously asserted by a juror
13 because of his or her reluctance to perform an
14 unpleasant task. It does not mean a doubt arising
15 from the natural sympathy which we all have for others.
16 It is not necessary for the Government to prove the
17 guilt of a defendant beyond all possible doubt.
18 Because if that were the rule, very few people would
19 ever be convicted. It is practically impossible for
20 a person to be absolutely sure and convinced of any
21 controverted fact which, by its nature, is not
22 susceptible of mathematical certainty. In consequence,
23 the law says that a doubt should be a reasonable
24 doubt, not a possible doubt.

25 A reasonable doubt is a doubt based upon

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2 reason and common sense, the kind of doubt that would
3 make a reasonable person to hesitate to act. Proof
4 beyond a reasonable doubt must therefore be proof of
5 such a convincing character that you would be willing
6 to rely and act upon it unhesitatingly in the most
7 important of your own affairs.

8 The jury will remember that a defendant is
9 never to be convicted on mere suspicion or conjecture.

10 Again, a reasonable doubt means a doubt
11 sufficient to cause a prudent person to hesitate to
12 act in the most important affairs of his or her life.

13 The requirement of proof beyond a reasonable
14 doubt operates on the whole case and not on the
15 separate bits of evidence. Each individual item of
16 evidence need not be proven beyond a reasonable
17 doubt.

18 Now, I am going to take the counts of the
19 indictment in reverse order. In other words, I am
20 going to discuss first with you count 2 of the
21 indictment or the substantive count of possession of
22 goods stolen from foreign commerce, knowing them to
23 have been stolen, and thereafter discuss with you
24 count 1 which is the conspiracy count relating to the
25 same offense. I think it will make it easier for you

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2 to understand the various applicable rules of law
3 applicable to the case if I take them in this reverse
4 order. But bear in mind that I am going to discuss
5 the two counts with you in reverse order beginning
6 with count 2.

7 Now, this is the charge in count 2 of the
8 indictment that on or about and between the 17th day
9 of March, 1975 and the 27th day of March, 1975 both
10 dates being approximate and inclusive, within the
11 Eastern District of New York--

12 Now, there are several names that I am going
13 to read, but remember, you are only concerned now
14 with five. They are the first five. The
15 defendants William J. Joyce, Donald Walsh -- they are
16 not the first five, I am sorry.

17 William J. Joyce, Donald Walsh, you are
18 concerned with those two.

19 Edward J. Boyle, Thomas M. Burns, you are not
20 concerned with them.

21 James Grimsley, you are concerned with.

22 Janet Terri, also known as Janet Ferry, you
23 are concerned with.

24 Robert Schoenly, Peter Areiter, you are not
25 concerned with.

1 Louis Bovell, you are concerned with.

2 John Freudiger and Morton Hanan, you are not
3 concerned with.

4 Did willingly and unlawfully receive and have
5 in their possession approximately 117 cartons of
6 Timex watches, having a value of approximately \$830,000,
7 which goods were stolen from Flying Tiger Airlines at
8 John F. Kennedy International Airport, Queens, New
9 York, on March 17, 1975, while moving as a part of a
10 foreign shipment of freight from Taipei, Taiwan to
11 Queens, New York, the defendants William J. Joyce,
12 Donald Walsh, Edward J. Boyle, Thomas M. Burns, Janet
13 Terri, also known as Janet Perry, Robert Schoenly,
14 Peter Areiter, Louis Bovell, John Freudiger and Morton
15 Hanan then knowing said goods to have been stolen.

16 All in violation of Title 18 United States Code
17 Section 659 and Section 2.

18 Now, Section 659 of Title 18 of the United
19 States Code provides in pertinent part as follows:

20 "Whoever embezzles, steals, or unlawfully takes,
21 carries away, or conceals, or by fraud or deception,
22 obtains from any...aircraft, air terminal, airport,
23 aircraft terminal or air navigation facility with
24 intent to convert to his own use any goods or chattels
25

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2 moving as or which are a part of or which constitute
3 an interstate or foreign shipment of freight, express
4 or other property; or

5 "Whoever buys or receives or has in his
6 possession any such goods or chattels, knowing the
7 same to have been embezzled or stolen..." shall be in
8 violation of the law.

9 Now, Section 2 of Title 18 of the United States
10 Code, which section is also cited in Count 2 of the
11 indictment, provides that:

12 "Whoever commits an offense against the
13 United States or aids, abets, counsels, commands,
14 induces or procures the commission, is punishable as
15 a principal.

16 "Whoever willfully causes an act to be done
17 which if directly performed by him or another would
18 be an offense against the United States, is punish-
19 able as a principal."

20 Now, the essential elements of the crime
21 charged in count 2 which must be proved beyond a
22 reasonable doubt are as follows:

23 1. That the accused had the goods or
24 merchandise in his, her or their possession, as the
25 case may be;

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2 2. That such goods or merchandise exceeded in
3 value \$100;

4 3. That such possession was done knowingly and
5 intentionally;

6 4. That such goods or merchandise had been
7 embezzled, stolen or unlawfully taken or carried away
8 from an aircraft, air terminal, airport, aircraft
9 terminal or air navigational facility while the goods
10 or merchandise were moving as or were a part of or
11 constituted a foreign shipment of freight, express
12 or other property; and

13 5. That the accused knew such goods or
14 merchandise to have been stolen.

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16 (continued next page)
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2 THE COURT: (Continuing.) It is not
3 necessary that the accused knew that the goods or
4 merchandise had been stolen from an aircraft,
5 air terminal, airport, aircraft terminal or
6 air navigational facility while the goods or
7 merchandise were moving as part of a foreign
8 shipment. It is necessary only that the proof
9 shows that the accused knew that the goods or
10 merchandise had been stolen.

11 The term "foreign commerce" includes a
12 shipment from a foreign country to this country.

13 Section 10 of Title 18 of the United States
14 Code, provides that:

15 "The term 'foreign commerce', as used in
16 this title, includes commerce with a foreign
17 country."

18 The foreign commerce character of the
19 property stolen is an essential element of this
20 offense. The property must have been moving in
21 or been a part of a shipment from a foreign
22 country at the time of the theft.

23 The foreign commerce character of the
24 shipment commences when the property is
25 segregated for foreign commerce shipment and comes

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into the possession of those who are assisting its course in foreign commerce and continues until the property arrives at its ultimate destination in this country and is there delivered to the person to whom it is shipped.

Section 659 of Title 18 of the United States Code provides that:

"To establish the ... foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made."

"Prima facie evidence" means sufficient evidence, unless outweighed by other evidence in the case. In other words, waybills or bills of lading or other shipping documents such as invoices, if proved, are sufficient to show the foreign commerce character of the shipment in the absence of evidence in the case which leads the jury to a different or contrary conclusion.

Again, the evidence in the case need not establish that the accused actually knew the goods or merchandise mentioned in the indictment

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constituted a part of a foreign commerce shipment.

The word "unlawfully" means contrary to law. So to do an act unlawfully means to do willingly something which is contrary to law.

The word "stolen" as used in the crime involved herein includes all wrongful and dishonest takings of property with the intent to deprive the owner of the rights and benefits of ownership.

Otherwise stated, the word "steal" is used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another and deprives the owner of the rights and benefits of ownership but may or may not involve the element of stealth. To steal means to take away from one in lawful possession without right with the intention to keep it wrongfully.

The government must establish the value of the property stolen because the law provides a greater penalty if the value of the property exceeds \$100. Value under the statute means face, par or market value or cost price either wholesale or retail, whichever is greater. The value of the property stolen is a question of

fact to be determined by the jury.

In order to authorize the greater penalty, the government must establish beyond a reasonable doubt that the value of the property exceeds \$100.

Possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the jury may reasonably draw the inference and find, in the light of surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen.

Ordinarily, the same inference may reasonably be drawn from a false explanation of possession of recently stolen property.

The term "recently" is a relative term, and has no fixed meaning. Whether property may be considered as recently stolen depends upon the nature of the property, all the facts and circumstances shown by the evidence in the case. The longer the period of time since the theft, the more doubtful becomes the inference which may reasonably be drawn from unexplained possession.

If you find beyond a reasonable doubt from the evidence in the case that the cartons of Timex

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2 watches described in the indictment were stolen,
3 and that, while recently stolen, the property was
4 in the possession of the accused, you may, from
5 those facts, draw the inference that the property
6 was possessed by the accused with knowledge that
7 the property was stolen, unless possession of the
8 recently stolen property by the accused is
9 explained to the satisfaction of the jury by other
10 facts and circumstances in evidence in the case.

11 In considering whether possession of recently
12 stolen property has been satisfactorily explained,
13 you are reminded that, in the exercise of
14 constitutional rights, the accused need not take
15 the witness stand and testify.

16 There may be opportunities to explain
17 possession by showing other facts and circumstances,
18 independent of the testimony of the accused.

19 You will always bear in mind that the law
20 never imposes upon a defendant in a criminal case
21 the burden or duty of calling any witnesses or
22 producing any evidence.

23 It is the exclusive province of the jury
24 to determine whether the facts and circumstances
25 shown by the evidence in the case warrant any

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2 inference which the law permits you to draw from
3 possession of recently stolen property. If any
4 possession the accused may have had of recently
5 stolen property is equally consistent with
6 innocence, or if you entertain reasonable doubt
7 of guilt, you must acquit the accused.

8 Again, more specifically, in addition to
9 considering other factual circumstances on the
10 question of the defendants' alleged guilty
11 knowledge, if you find beyond a reasonable doubt
12 that any of the defendants were in possession of
13 watches which had been recently stolen, you may,
14 but need not infer from that fact alone that a
15 defendant knew that the watches in question were
16 stolen. The rationale behind this inference is
17 that possession of the fruits of the crime
18 shortly after its commission justify the inference
19 that the possession is guilty possession, and
20 though only prima facie evidence of guilt, it may
21 be of controlling weight unless explained by the
22 circumstances surrounding the possession or
23 accounted for in some other way consistent with
24 innocence.

25 It is obvious that as to the charges

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2 contained in the indictment, one of the critical
3 questions is whether the defendants knew they had
4 possession of stolen watches. Actual knowledge
5 that a defendant received and then possessed
6 stolen watches is one of the essential elements
7 of the offense charged.

8 You may not find a defendant guilty unless
9 you find beyond a reasonable doubt that he or she
10 knew that he or she received and was then in
11 possession of stolen merchandise. The fact of
12 knowledge may be established by direct or circum-
13 stancial evidence just as any other fact in the
14 case. Knowledge may be proven by a defendant's
15 conduct since we have no way of looking into a
16 person's mind directly.

17 Two of the defendants have flatly testified
18 that they had no such knowledge. Now, in this
19 connection bear in mind that one may not willfully
20 and intentionally remain ignorant of a fact,
21 important and material to his conduct, in order to
22 escape the consequences of the criminal law.

23 If you find from all the evidence beyond a
24 reasonable doubt that any defendant believed he
25 or she received and was then in possession of stolen

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watches and deliberately and consciously tried to

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avoid learning that the watches in question were

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stolen in order to be able to say, should he or

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she be apprehended, that he or she did not know,

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you may treat this deliberate avoidance of

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positive knowledge as the equivalent of knowledge.

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In other words, you may find that any

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defendant acted knowingly if you find that either

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he or she actually knew that he or she had received

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stolen watches or that he or she deliberately closed

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his or her eyes to what he or she had every reason

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to believe was the fact.

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(Continued next page.)

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2 THE COURT: (Continuing.) I should like to
3 emphasize, ladies and gentlemen, that the requisite
4 knowledge cannot be established by demonstrating
5 merely negligence or even foolishness on the part
6 of a defendant.

7 One of the elements of the crime charged is
8 that the accused knew that the Timex watches he,
9 she or they possessed were stolen. As I have
10 already instructed you, that must be proven beyond
11 a reasonable doubt.

12 Knowledge is something that you cannot see
13 with the eye or touch with the finger. It is
14 seldom possible to prove it by direct evidence.
15 The government relies largely on circumstantial
16 evidence in this case to establish knowledge.

17 In deciding whether a defendant knew the
18 Timex watches were stolen, you should consider
19 all the circumstances, such as how a defendant
20 handled the transaction, how he, she or they
21 conducted himself, herself or themselves. Do his,
22 her or their actions betray guilty knowledge that
23 he, she or they were dealing with stolen watches
24 or are the actions those of a duped, innocent man
25 or woman or one who is just acting negligently or

carelessly.

Guilty knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of a defendant.

Knowledge that the goods have been stolen may be inferred from circumstances that would convince a man of ordinary intelligence that this is a fact. The element of knowledge may be satisfied by proof that a defendant deliberately closed his or her eyes to what otherwise would have been obvious to him or her.

In this connection you should scrutinize the entire conduct of a defendant at or near the time the offenses are alleged to have been committed.

The law recognizes two kinds of possession: Actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through

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another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that a defendant had actual or constructive possession, either alone or jointly with others.

An act or failure to act is "knowingly" done if done voluntarily and intentionally, not because of mistake or accident or other innocent reason.

In connection with the question of possession, bear in mind that Count 2 charges a violation of Section 2 of Title 18 of United States Code, the so-called aiding and abetting section, which reads:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands,

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induces, or procures its commission, is punishable
as a principal.

"Whoever willfully causes an act to be done,
which if directly performed by him or another
would be an offense against the United States, is
punishable as a principal."

The guilt of a defendant may be established
without proof that the accused personally did
every act constituting the offense charged.

In other words, every person who willfully
participates in the commission of a crime may be
found guilty of that offense. Participation is
willful if done voluntarily and intentionally, and
with a specific intent to do something the law
forbids, or with a specific intent to fail to do
something the law requires to be done; that is to
say, with bad purpose either to disobey or to
disregard the law.

In order to aid and abet another to commit
a crime, it is necessary that the accused willfully
associate himself in some way with the criminal
venture, and willfully participate in it as he
would in something he wishes to bring about; that
is to say, that he willfully seek by some act or

omission of his to make the criminal venture succeed.

An act or omission is "willfully" done if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that a defendant aided and abetted the crime, unless you find beyond a reasonable doubt that a defendant was a participant and not merely a knowing spectator.

Now going to Count 1 of the indictment.
Count 1, which is the first count:

"On or about and between the 17th day of

March, 1975 and the 27th day of March, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, James Grimsley, Leonard Nitti, Janet Terri also known as Janet Ferry, Robert Schoenly, Pete Areiter, Louis Bovell, John Freudiger and Morton Hanan did knowingly, intentionally and willfully combine, conspire, confederate and agree, together with Barbara Carson, named as a co-conspirator but not as a defendant herein, and with others, to commit an offense against the United States in violation of Title 18, United States Code, Section 659 and Section 2, to wit, to knowingly and willfully receive and have in their possession approximately 117 cartons of Timex watches, having a value of approximately \$830,000, which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York, on March 17th, 1975, while moving as part of a foreign shipment of freight from Taipei, Taiwan to Queens, New York, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, James Grimsley, Leonard Nitti, Janet Terri also known as

1 Janet Ferry, Robert Schoenly, Peter Areiter, Louis
2 Bovelli, John Freudiger and Morton Hanan, then knowing
3 the said goods to have been stolen.
4

5 "In furtherance of said conspiracy and to
6 effect the objects thereof, the defendants William
7 J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M.
8 Burns, James Grimsley, Leonard Nitti, Janet Terri
9 also known as Janet Ferry, Robert Schoenly, Peter
10 Areiter, Louis Bovelli, John Freudiger and Morton
11 Hanan and the unindicted co-conspirator, Barbara
12 Carson, committed the following overt acts:

13 "One, on or about March 17, 1975 the
14 defendants Donald Walsh, Thomas M. Burns, Peter
15 Areiter, Louis Bovelli and Morton Hanan met at
16 Lynbrook, New York.

17 "Two, on or about March 21, 1975, the
18 defendant Janet Terri also known as Janet Ferry made
19 a telephone call to Hub Truck Rental Company.

20 "Three, on or about March 21, 1975, the
21 defendant Robert Schoenly rented a truck.

22 "Four, on or about March 24, 1975, the
23 defendants William J. Joyce, Thomas M. Burns and
24 Leonard Nitti met at Lynbrook, New York.

25 "Five, on or about March 27, 1975, the

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2 defendants William J. Joyce, Edward J. Boyle, Thomas
3 M. Burns and James Grimsley, and unindicted
4 co-conspirator Barbara Carson, met at Brooklyn, New
5 York, all in violation of Title 18, United States
6 Code Section 371."

7 Section 371 of Title 18 of the United States
8 Code provides, in pertinent part:

9 "If two or more persons conspire ... to commit
10 any offense against the United States ... and one or
11 more of such persons do any act to effect the object
12 of the conspiracy, each" is guilty of an offense
13 against the United States.

14 The following are the essential elements which
15 are required to be proven beyond a reasonable doubt
16 in order to establish the offense of conspiracy
17 charged in this indictment.

18 One, that there was an agreement or conspiracy
19 between two or more persons to violate the law as
20 charged in the indictment;

21 Two, that the conspiracy described in the
22 indictment was willfully formed and existed at or
23 about the time alleged;

24 Three, that the conspiracy was so willfully
25 formed and existing for the purpose of receiving and

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2 having in the possession of one or more conspirators
3 cartons of Timex watches which had been embezzled,
4 stolen, or unlawfully taken, carried away or concealed
5 from an aircraft, air terminal, airport, aircraft
6 terminal or air navigational facility which cartons
7 had been moving as a part of or which constituted a
8 foreign shipment of freight, express or other
9 property, the accused knowing the same to have been
10 stolen;

11 Four, that the accused willfully became a
12 member of the conspiracy;

13 Five, that one of the co-conspirators there-
14 after knowingly committed one of the overt acts charged
15 in the indictment at or about the time and place
16 alleged;

17 Six, that such overt act was knowingly done
18 in furtherance of the object of the conspiracy as
19 charged; and

20 Seven, that the accused was knowingly and
21 willfully a member of the conspiracy with the intent
22 to further one of its objectives.

23 If the jury should find beyond a reasonable
24 doubt from the evidence in the case that the
25 existence of the conspiracy charged in the indictment

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2 has been proved, and that during the existence of the
3 conspiracy one of the overt acts alleged was
4 knowingly done by one or more of the conspirators in
5 furtherance of some object or purpose of the conspiracy,
6 then proof of the conspiracy offense charged is
7 complete.

8 Now what is a conspiracy? A conspiracy is a
9 combination of two or more persons, by concerted action,
10 to accomplish some unlawful purpose. So, a conspiracy
11 is a kind of "partnership in criminal purposes," in
12 which each member becomes the agent of every other
13 member. The gist of the offense is a combination or
14 agreement to disobey, or to disregard, the law.

15 Mere similarity of conduct among various
16 persons, and the fact that they may have associated
17 with each other, and may have assembled together and
18 discussed common aims and interests, does not
19 necessarily establish proof of the existence of a
20 conspiracy.

21 However, the evidence in the case need not show
22 that the members entered into any express or formal
23 agreement, or that they directly, by words spoken or
24 in writing, stated between themselves what their
25 object or purpose was to be, or the details thereof,

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2 or the means by which the object or purpose was to be
3 accomplished.

4 what the evidence in the case must show beyond
5 a reasonable doubt, in order to establish proof that
6 a conspiracy existed, is that the members in some way
7 or manner, or through some contrivance, positively
8 or tacitly, came to a mutual understanding to try to
9 accomplish a common and unlawful plan.

10 The evidence in the case need not establish
11 that all the means or methods set forth in the
12 indictment were agreed upon to carry out the alleged
13 conspiracy; nor that all means or methods which were
14 agreed upon, were actually used or put into operation;
15 nor that all of the persons charged to have been
16 members of the alleged conspiracy were such.

17 What the evidence in the case must establish
18 beyond a reasonable doubt is that the alleged
19 conspiracy was knowingly formed, and that one or more
20 of the means or methods described in the indictment
21 were agreed upon to be used, in an effort to effect
22 or accomplish some object or purpose of the conspiracy,
23 as charged in the indictment; and that two or more
24 persons, including one or more of the accused, were
25 knowingly members of the conspiracy as charged in the

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2 indictment.

3 In your consideration of the evidence in the
4 case as to the offense of the conspiracy charged, you
5 should first determine whether or not the conspiracy
6 existed, as alleged in the indictment. If you
7 conclude that the conspiracy did exist, you should
8 next determine whether or not each of the accused
9 willfully became a member of the conspiracy.

10 If it appears beyond a reasonable doubt from
11 the evidence in the case that the conspiracy alleged
12 in the indictment was willfully formed, and that a
13 defendant lawfully became a member of the conspiracy
14 either at its inception or afterwards, and that
15 thereafter one or more of the conspirators committed
16 one or more overt acts in furtherance of some object
17 or purpose of the conspiracy, then there may be a
18 conviction even though the conspirators may not have
19 succeeded in accomplishing their common object or
20 purpose and in fact may have failed so doing.

21 The extent of any defendant's participation,
22 moreover, is not determinative of his or her guilt or
23 innocence. A defendant may be convicted as a
24 conspirator even though he or she may have played only a
25 minor part in the conspiracy.

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2 THE COURT: (Continuing): Merely because the
3 evidence shows that any of the defendants knew or were
4 acquainted with other parties to this matter is not
5 sufficient in and of itself and without more proof of
6 a defendant's guilt or proof of his or her
7 participation in the alleged conspiracy.

8 Each defendant must be judged upon the
9 evidence with respect to him or her, not solely upon
10 whom he or she knew or with whom he or she associated.

11 An "overt act" is any act knowingly committed
12 by one of the conspirators, in an effort to effect or
13 accomplish some object or purpose of the conspiracy.
14 The overt act need not be criminal in nature, if
15 considered separately and apart from the conspiracy.
16 It may be as innocent as the act of a man walking
17 across the street, or driving an automobile, or using
18 a telephone. It must, however, be an act which
19 follows and tends toward accomplishment of the plan
20 or scheme. It must be knowingly done in furtherance
21 of some object or purpose of the conspiracy charged
22 in the indictment. It is not necessary that all of
23 the overt acts charged in the indictment were
24 performed. One overt act is sufficient.

25 One may become a member of the conspiracy

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2 without full knowledge of all the details of the
3 conspiracy. On the other hand, a person who has no
4 knowledge of a conspiracy, but happens to act in a
5 way which furthers some object or purpose of the
6 conspiracy, does not thereby become a conspirator.

7 Before the jury may find one or more or all of
8 the defendants or any other person has become a
9 member of the conspiracy, the evidence in the case
10 must show beyond a reasonable doubt that the
11 conspiracy was knowingly formed, and that the
12 particular defendant or other person who has been
13 claimed to have been a member, willfully participated
14 in the unlawful plan, with the intent to advance or
15 further some object or purpose of the conspiracy.

16 To act or participate willfully means to act
17 or participate voluntarily or intentionally and with
18 specific intent to do something the law forbids; that
19 is to say, to act or participate with the bad purpose
20 either to disobey or to disregard the law.

21 So if a defendant or any other person, with
22 understanding of the unlawful character of the plan,
23 knowingly encourages, advises or assists, for the
24 purpose of furthering the undertaking or scheme, he or she
25 thereby becomes a willful participant; i.e., a

1
2 conspirator.

3 One who willfully joins in an existing conspiracy
4 is charged with the same responsibility as if he or she
5 had been one of the originators or instigators of the
6 conspiracy.

7 In determining whether a conspiracy existed,
8 the jury should consider the actions and the
9 declarations of all the alleged participants. How-
10 ever, in determining whether a particular defendant
11 was a member of a conspiracy, if any, the jury should
12 consider only his or her acts and statements. He or she
13 cannot be bound by the acts or declarations of other
14 participants until it is established that a
15 conspiracy existed, and that he or she was one of its
16 members.

17 Whenever it appears beyond a reasonable
18 doubt from the evidence in the case that a conspiracy
19 existed, and that a defendant was one of the members,
20 then the statements thereafter knowingly made and the
21 acts knowingly done, by any person likewise found to
22 be a member, may be considered by the jury as
23 evidence in the case as to the defendant found to
24 have been a member, even though the statements and
25 acts made may have occurred in the absence and

1 without the knowledge of the defendant, provided such
2 statements and acts were knowingly made and done
3 during the continuancy of such conspiracy, and in
4 furtherance of some object or purpose of the conspiracy.
5

6 Otherwise, any admission or incriminatory
7 statement made or act done outside of court, by one
8 person, may not be considered as evidence against any
9 person who was not present and did not hear the
10 statement made or see the act done.

11 Therefore, statements of any conspirator which
12 are not in furtherance of the conspiracy or made
13 before the existence of the conspiracy or after its
14 termination may be considered as evidence only
15 against the person making them.

16 The indictment charges a conspiracy among some
17 twelve persons, all of whom are named -- I think it's
18 thirteen, including Barbara Carson, but twelve
19 defendants, all of whom are named in the indictment
20 as co-conspirators.

21 A person cannot conspire with himself or
22 herself and, therefore, you cannot find any of the
23 defendants guilty unless you find beyond a reasonable
24 doubt that he or she participated in the conspiracy
25 as charged with at least one other person. With this

1
2 qualification you may find all of the defendants
3 guilty or some of the defendants guilty and some not
4 guilty, or all not guilty, all in accordance with
5 these instructions and the facts you find.

6 An act is done knowingly if done voluntarily
7 and intentionally and not because of mistake or
8 accident or other innocent reason.

9 The purpose of adding the word "knowingly" was
10 to ensure that no one would be convicted for an act
11 done because of mistake or accident or other
12 innocent reason.

13 As stated before, with respect to an offense
14 such as charged in this case, specific intent must
15 be proved beyond a reasonable doubt before there can
16 be a conviction.

17 An act is done willfully if done voluntarily,
18 with a specific intent to do something the law forbids;
19 that is to say, with bad purpose, either to disobey
20 or to disregard the law.

21 The weight of the evidence is not necessarily
22 determined by the number of witnesses testifying on
23 either side. You should consider all the facts and
24 circumstances in evidence to determine which of the
25 witnesses are worthy of greater credence. You may

1
2 find that the testimony of a smaller number of
3 witnesses on one side is more credible than the
4 testimony of a greater number of witnesses on the
5 other side.

6 Knowledge and intent ordinarily may not be
7 proved directly, because there is no way of fathoming
8 or scrutinizing the operations of the human mind.
9 But you may infer a defendant's knowledge and intent
10 from the surrounding circumstances. You may consider
11 any statement made and done or omitted by a defendant,
12 and all other facts and circumstances in evidence
13 which indicate his or her state of mind. It is
14 ordinarily reasonable to infer that a person intends
15 the natural and probable consequences of acts
16 knowingly done or knowingly omitted.

17 Now, statements and arguments of counsel are
18 not evidence in the case, unless made as an admission
19 or stipulation of fact.

20 When the attorneys on both sides stipulate or
21 agree as to the existence of a fact, as I believe
22 Mr. Kimelman and Mr. Kaplan did, you must, unless
23 otherwise instructed, accept the stipulation as
24 evidence and regard that fact as proved.

25 The Court may take judicial notice of certain

1
2 facts or events. I think I only took judicial notice
3 of one or two dates during the course of the trial.
4 When the Court declares it will take judicial notice
5 of some fact or event, you may accept the Court's
6 declaration as evidence and regard as proved the
7 fact or event which has been judicially noticed, but
8 you are not required to do so, since you are the sole
9 judges of the facts.

10 Unless you are otherwise instructed, the
11 evidence in the case always consists of the sworn
12 testimony of the witnesses, regardless of who may
13 have called them, and all exhibits received in
14 evidence, regardless of who may have produced them,
15 and all facts which may have been admitted or
16 stipulated and all facts and events which may have
17 been judicially noticed and all applicable
18 presumptions stated in these instructions.

19 Any evidence as to which an objection was
20 sustained by the Court, and any evidence ordered
21 stricken by the Court, must be entirely disregarded.

22 Evidence does, however, include what is
23 brought out from witnesses on cross-examination as
24 well as what is testified to on direct examination.

25 Unless you are otherwise instructed, anything

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2 you may have seen or heard outside the courtroom is
3 not evidence and must be entirely disregarded.

4 You are to consider only the evidence in the
5 case and your verdict is to be based on the evidence
6 only. But in your consideration of the evidence, you
7 are not limited to the bald statements of the
8 witnesses. In other words, you are not limited solely
9 to what you see and hear as the witnesses testify.
10 You are permitted to draw, from facts which you find
11 have been proved, such reasonable inferences as you
12 feel are justified in the light of experience.

13 Inferences are deductions or conclusions which
14 reason and common sense lead the jury to draw from
15 facts which have been established by the evidence in
16 the case.

17 If a lawyer asks a witness a question which
18 contains an assertion of fact, you may not consider
19 the assertion as evidence of that fact. The lawyer's
20 statements are not evidence.

21 Evidence relating to any statement, or act or
22 omission, claimed to have been made or done by a
23 defendant outside of court, and after a crime has been
24 committed, should always be considered with caution
25 and weighed with great care; and all such evidence

1 should be disregarded entirely, unless the evidence
2 in the case convinces the jury beyond a reasonable
3 doubt that the statement or act or omission was
4 knowingly made or done.
5

6 A statement or act or omission is "knowingly"
7 made or done, if done voluntarily and intentionally,
8 and not because of mistake or accident or other
9 innocent reason.

10 In determining whether any statement or act
11 or omission claimed to have been made by a defendant
12 outside of court, and after a crime has been committed,
13 was knowingly made or done, the jury should consider
14 the age, sex, training, education, occupation and
15 physical and mental condition of the defendant, and
16 also all other circumstances in evidence surrounding
17 the making of the statement or act or omission,
18 including whether before the statement or act or
19 omission was made or done the defendant knew or had
20 been told and understood that he was not obligated or
21 required to make or do the act or omission claimed
22 to have been made or done by him, that any statement
23 or act or omission which he might make or do could be
24 used against him in court and he was entitled to the
25 assistance of counsel before making any statement,

oral or in writing, or before doing any act or omission; and that if he was without money or means to retain counsel of his own choice, an attorney would be appointed to advise and represent him free of cost or obligation.

If the evidence in the case does not convince beyond a reasonable doubt that an admission was made voluntarily and intentionally, you should disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonable doubt that an admission was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the admission.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on

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2 the stand. Consider the witness' ability to observe
3 the matters as to which he or she has testified and
4 whether he or she impresses you as having an accurate
5 recollection of the matters. Consider also any
6 relation each witness may bear to either side of the
7 case; the manner in which each witness might be
8 affected by the verdict; and the extent to which, if
9 at all, each witness is either supported or contra-
10 dicted by other evidence in the case.

11 Inconsistencies or discrepancies in the
12 testimony of a witness, or between the testimony of
13 different witnesses may or may not cause the jury to
14 discredit such testimony. Two or more persons
15 witnessing an incident or a transaction may see or
16 hear it differently; and innocent misrecollection,
17 like failure of recollection, is not an uncommon
18 experience. In weighing the effect of a discrepancy,
19 always consider whether it pertains to a matter of
20 importance or an unimportant detail, and whether the
21 discrepancy results from innocent error or intentional
22 falsehood.

23 After making your own judgement, you will give
24 the testimony of each witness such credibility, if
25 any, as you may think it deserves.

Robert Schoenly, Peter Areiter, Thomas Burns, Leonard Nitti and Edward Boyle testified that they participated in the crime charged. They do not become incompetent to testify in the trial because they say they participated in the crime charged. They are classified as alleged accomplices.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

(continued next page)

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THE COURT: (Continuing.) The testimony of a witness may be discredited or impeached by showing that he or she previously made statements which are inconsistent with his or her present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

A defendant who wishes to testify is a competent witness and a defendant's testimony is to be judged in the same way as that of any other witness.

The law permits a defendant, at his own request, to testify in his own behalf.

The testimony of two individual defendants is before you. You must determine how far in each case it is credible. The deep personal interest which every

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defendant has in the result of this case should be considered in determining the credibility of his testimony.

In testing a defendant's credibility, the jury is obliged to consider his vital interest in the outcome of the trial.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no inference of any kind may be drawn from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

There has been testimony here to the previous good character of the defendants, one or more or all of the defendants. You should consider such evidence of character together with all the other facts with respect to the guilt or innocence of the defendant. Evidence of good character may in itself create a reasonable doubt where without such evidence no reasonable doubt would have existed. But if on all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he or she had previously enjoyed a reputation of good character does

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not justify or excuse the offense and you should not
acquit a defendant merely because you believe he or she
is a person of good repute.

The testimony of a character witness is not to
be regarded by you as expressing the witness' opinion
as to the guilt or innocence of the defendant. The
guilt or innocence of the defendant is for you alone to
determine.

It is the duty of the attorney on each side of
a case to object when the other side offers testimony
or other evidence which the attorney believes is not
properly admissible. You should not show prejudice
against an attorney or his client because the attorney
has made objection.

Upon allowing testimony or other evidence to
be introduced over the objection of an attorney, the
Court does not, unless expressly stated, indicate any
opinion as to the weight or effect of such evidence.
As stated before, the jurors are the sole judges of
the credibility of all witnesses and the weight and
effect of all evidence.

When the Court has sustained an objection to a
question addressed to a witness, the jury must dis-
regard the question entirely, and may draw no inference

1 from the wording of it, or speculate as to what the
2 witness would have said if he or she had been permitted
3 to answer any question.
4

5 The fact that the Court has asked one or more
6 questions of a witness for clarification or
7 admissibility of evidence purposes is not to be taken
8 by you as in any way indicating that the Court has any
9 opinion as to the guilt or innocence of a defendant in
10 this case, and you are to draw no such inference
11 therefrom. That determination, as to the guilt or
12 innocence of the defendants in this case, is up to you
13 and you alone based on all the facts in this case and
14 the applicable law in these instructions.

15 There was also some proof and some discussion
16 on the obligation, putting it in the negative, or
17 impropriety of a lawyer going over testimony with
18 witnesses he calls to the witness stand. It is
19 perfectly proper for a lawyer to ask a witness what he
20 or she knows about the case, to go over that testimony
21 with the prospective witness and to go over it in
22 question and answer form.

23 You are here to determine the guilt or
24 innocence of the accused from the evidence in the case.
25 You are not called upon to return a verdict as to the

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2 guilt or innocence of any other person or persons.
3 There are five defendants before you and only the five.
4 So, if the evidence in the case convinces you beyond
5 a reasonable doubt of the guilt of the accused, you
6 should so find, even though you may believe one or
7 more other persons are guilty. But if any reasonable
8 doubt remains in your minds after impartial considera-
9 tion of all the evidence in the case, with respect to
10 one or more or all of the five on trial, it is your
11 duty to find such one or more or all not guilty.

12 The verdict must represent the considered
13 judgment of each juror. In order to return a verdict,
14 it is necessary that each juror agree thereto. Your
15 verdict must be unanimous.

16 It is your duty, as jurors, to consult with one
17 another, and to deliberate with a view to reaching an
18 agreement, if you can do so without violence to
19 individual judgment. Each of you must decide the case
20 for himself and herself, but do so only after an
21 impartial consideration of the evidence in the case
22 with your fellow jurors. In the course of your
23 deliberations, do not hesitate to re-examine your own
24 views, and change your opinion, if convinced it is
25 erroneous. But do not surrender your honest

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conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

It is your duty to give separate personal consideration to the case of each individual defendant, each of the five individual defendants before you.

When you do so, you should analyze what the

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2 evidence shows with respect to that individual, leaving
3 out of consideration entirely any evidence admitted
4 solely against the other defendants.

5 You must reach a separate unanimous verdict of
6 guilty or not guilty as to each individual defendant.

7 At any time during your deliberations you may
8 return into Court your verdict with respect to any
9 defendant as to whom you have unanimously agreed, but
10 you must render a verdict with respect to each of the
11 five defendants on each of the two counts in the
12 indictment, a separate verdict with respect to each of
13 the five defendants on each of the two counts in the
14 indictment.

15 If any reference by the Court or by counsel to
16 matters of evidence does not coincide with your own
17 recollection, it is your recollection which should
18 control during your deliberations.

19 The punishment provided by law for the offenses
20 charged in the indictment is a matter exclusively
21 within the province of the Court, and should never be
22 considered by the jury in any way in arriving at an
23 impartial verdict as to the guilt or innocence of the
24 accused.

25 Upon retiring to the jury room, the juror

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2 seated closest to me, in the gray suit, Juror Number 1,
3 will act as your foreman, unless he elects not to do so.
4 If he elects not to do so, then you will elect a
5 foreman or forelady from amongst your number.

6 The foreman will preside over your
7 deliberations, and will be your spokesman here in Court.

8 If it becomes necessary during your
9 deliberations to communicate with the Court, you may
10 send a note by a bailiff, signed by your foreman, or
11 by one or more members of the jury. No member of the
12 jury should ever attempt to communicate with the Court
13 by any means other than a signed writing and the Court
14 will never communicate with any member of the jury on
15 any subject touching the merits of the case, otherwise
16 than in writing, or orally here in open Court.

17 I said you may send a note by a "bailiff." I
18 meant you may send a note by a deputy marshal. He
19 will be outside the jury room door.

20 You will note from the oath about to be taken by
21 the deputy marshals, that they too as well as all
22 other persons, are forbidden to communicate in any way
23 or manner with any member of the jury on any subject
24 touching the merits of the case.

25 Bear in mind also, because this is very

1
2 important, that you are never to reveal to any person,
3 not even to the Court, not to anyone connected with
4 the Court how the jury stands numerically or otherwise
5 on the question of the guilt or innocence of any of
6 the accused until after you have reached a unanimous
7 verdict.

8 When, as and if you reach an unanimous verdict,
9 you are to write me a note and say "We have reached a
10 unanimous verdict."

11 Do not tell me what the verdict is, but "We
12 have reached a unanimous verdict."

13 You state your verdict here in open Court. You
14 do not send it to me in a note. Do not send me a note
15 saying we stand thus and so for acquittal or conviction
16 or vice versa, at any stage of the proceedings. If
17 you do, it may be necessary to declare a mistrial and
18 retry the whole case at considerable expense and
19 effort to all of the parties, with a new jury.

20 So do not send me such a note. Send me notes
21 only when, as and if you reach a unanimous verdict,
22 and then only so state. Do not state any more than
23 that, that we have reached a unanimous verdict.

24 All right. Ladies and gentlemen, you may
25 retire to the jury room for just a few moments while I

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2 discuss some legal questions with the attorneys. Do
3 not begin discussing the case at this stage. I will
4 recall you and let you know when you may.

5 (Continued next page.)
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(The following occurred in the absence of the jury.)

MR. VERDIRAMO: Your Honor, I just repeat for the record my objections to request No. 2 of the Government, and also any other such part of your charge where it referred to any of the other defendants testifying and any weight that may be given to their testimony.

THE COURT: I beg your pardon? And also to what?

MR. VERDIRAMO: To any other part of your charge not specifically picking any of it out, wherein you may have referred to any of the other defendants taking the stand and any weight that's being given to their testimony. Only because I feel in this situation it puts an undue prejudice upon my client, Mr. Joyce.

THE COURT: You are sort of caught between the devil and the deep blue sea.

MR. VERDIRAMO: I guess so.

MR. O'BRIEN: Your Honor, I take exception to your Honor's charge on the possession of recently stolen property. Not the first charge, and I believe that was your Honor's charge, but rather the

Government's request to charge, wherein or, rather, ¹⁵¹¹
than read it all, from that portion which starts
"The rationale behind the inference," right down to
the conclusion consistent with innocence.

Secondly, on character testimony, I take
exception to that portion of your Honor's charge which
started with "But if," and there on down to the
conclusion of the charge -- conclusion of the charge
on character testimony.

THE COURT: You have to re-write Devitt and
Blackmoor.

MR. O'BRIEN: Your Honor, I still take
exception to it.

THE COURT: All right.

MR. O'BRIEN: I further take exception to that
charge regarding the -- I believe that you stated,
your Honor, that the defendant must have actual
knowledge that he had possession and that the watches
were stolen, rather than stating that he must -- must
have actual knowledge that he -- that the watches were
stolen.

Does the Court understand what I mean?

THE COURT: I understand. I think I said it
right.

MR. O'BRIEN: Your Honor, I would again request

1 that the Court charge the jury that they must find,
2 beyond a reasonable doubt, the defendant had actual
3 knowledge before they can - actual knowledge that the
4 goods were stolen before they can convict him.

5 I also take exception to that portion of your
6 Honor's charge wherein you stated that the defendant
7 may not intentionally remain ignorant of the fact and
8 in order to escape consequences of the criminal law,
9 and also to that portion wherein your Honor stated
10 that he may not deliberately and consciously try to
11 avoid learning that the watches in question were
12 stolen in order to be able to say she had or she had
13 been apprehended, that he or she did not know. You
14 may treat this deliberate avoidance as positive
15 knowledge. I think that's a complete misstatement of
16 the law, that they may treat this deliberate
17 avoidance as a positive knowledge.

18 I feel that that is exactly the same as saying
19 that the defendant knew or ~~he~~ should have known or
20 should have inquired, and I think that the cases --

21 THE COURT: There is a difference between what
22 you are calling passive avoidance and deliberate
23 avoidance. I think what we are dealing with here, and
24 I think what Mr. Kimelman's charge and my charge,
25 the portion I took his wording instead of my wording,

1 which was essentially the same. I had it from
2 independent sources. It is that if there is a
3 deliberate avoidance of knowledge, it is the equivalent
4 of knowledge.

5 You cannot close your eyes as to what you
6 ought to see.

7 MR. O'BRIEN: Your Honor, I don't believe
8 that's what the law is.

9 THE COURT: It is what is known as deliberate
10 avoidance. It is different than failure to see.

11 MR. O'BRIEN: Well, your Honor, I can see that
12 if --

13 THE COURT: There is no point in arguing. We
14 have been over it once.

15 MR. O'BRIEN: True.

16 MR. SPERLING: I join in all of Mr. O'Brien's
17 objections because they're peculiarly applicable to
18 myself. Probably to other defendants, too.

19 THE COURT: To your client.

20 MR. VERDIRAMO: I join, also.

21 MR. CORBETT: They apply to your client,
22 Mr. Sperling.

23 THE COURT: Peculiarly applicable to your
24 client, not to you. You are not on trial yet.

25 MR. SPERLING: Your Honor, I remember very well

1 a charge to a jury --

2 THE COURT: All right, no more.

3 Do you have any exceptions?

4 MR. CORBETT: No exceptions.

5 MR. KAPLAN: I have nothing further, your Honor.

6 THE COURT: Mr. Verdiramo, you stated yours.

7 MR. VERDIRAMO: Yes, your Honor.

8 MR. KIMELMAN: I have no exceptions, your Honor.

9 THE COURT: All right. You may bring the jury
10 in.

11 (Jury present.)

12 THE COURT: All right. Now, ladies and
13 gentlemen, I will begin with the alternates.
14 Alternate jurors, your time has come. Your services
15 are not needed for the deliberations themselves, and
16 so that you will be excused at this point with the
17 thanks of the Court for your attention to this case
18 over the past two weeks.

19 I do not know whether it is more fun to sit as
20 an alternate or as a juror. I have never sat as
21 either one. I would suspect you do not have to do
22 the additional final work, which is sometimes very
23 hard work of deliberating, and yet you get to hear
24 all of the case.

25 In any event, your duties are finished. You

1 should report to the Central Jury Room and you will
2 get instructions as to what, if any, additional duties
3 are required of you as jurors.

4 So you go with the thanks of the Court and with
5 the entire community. You should go now, picking up
6 anything you have in the jury r-om and then go down
7 to the elevator and then I will send the rest of the
8 jurors in right after you.

9 THE CLERK: Take your cards downstairs, please.

10 (Alternate jurors leave courtroom.)

11 THE COURT: Will you swear the marshals in,
12 please?

13 THE CLERK: Yes, your Honor.

14 (One male marshal and one female marshal duly
15 sworn by Clerk of Court.)

16 THE COURT: Ladies and gentlemen, I am sure
17 you realize the importance of the task that you are
18 about to perform. It is a very serious one and a
19 very significant one.

20 You have been given the arguments by all the
21 counsel and instructions by the Court and you should
22 do your duty in accordance with your own consciences
23 and do the best you can, given the case as it has been
24 given to you.

25 As I indicated to you, if you want any of the

exhibits you should send me a note and ask for them.
If you want a copy of the indictment, you should send
me a note and ask for it.

And if you want any portion -- by "portions"
I mean portions -- of any testimony re-read, you may
have it re-read. I would request and sincerely urge
that you not make such requests unless you feel it is
necessary. In other words, I do not want to re-try
the case on reading the testimony, unless you feel it
is necessary in your collective wisdom.

Now you may go and discuss the case.

(The jury began their deliberations at 10:50 A.M.
and the following occurred in their absence.)

MR. O'BRIEN: Your Honor, I am sorry. The
Court Reporters have advised me that we will not get
the summations. I understand that the Government is
getting the summations.

THE COURT: What do you want them for? You
can look at my copy.

MR. O'BRIEN: Thank you.

MR. SPERLING: Thank you.

(Recess taken.)

1 THE COURT: The first note we will mark is the
2 one asking for coffee.

3 I have a second juror's note -- the first one
4 having asked for coffee -- this one asks for pictures
5 of boxes from the FBI building, signed by Mr. Roberts.

6 MR. KIMELMAN: That's no problem, Judge.

7 THE COURT: Will you mark that Court Exhibit 2.

8 MR. O'BRIEN: Pictures of boxes.

9 THE COURT: FBI building.

10 MR. O'BRIEN: FBI bill?

11 THE COURT: Pictures of boxes from the FBI
12 building.

13 MR. O'BRIEN: Oh, building. That's what I
14 didn't get.

15 MR. KIMELMAN: Your Honor, I believe this is
16 what they're referring to.

17 THE COURT: Does everybody agree.

18 MR. O'BRIEN: Yes.

19 THE COURT: That's Exhibits 13 and 14.

20 All right, bring them in.

21 Wait a minute. Any objection to just sending
22 them in.

23 MR. VERDIRAMO: No objection.

24 THE COURT: Let the record show that we sent
25 Exhibits 13 and 14 into the jury.

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2 1 MR. O'BRIEN: Your Honor, I have one thing I
2 would like to discuss with your Honor.

3 I have just read the Joly case and the
4 Olivares-Vega case on the studied ignorance charge as
5 those cases have termed it. Both of those cases,
6 your Honor, did involve narcotics.

7 Secondly, no objection was taken. And the
8 Court -- the Court of Appeals was deciding that on the
9 plain error rule.

10 The third thing that distinguishes it from this
11 case, in my opinion, is that in those cases there was
12 no evidence whatever of knowledge.

13 And in one of those cases, a man came through
14 customs with cocaine strapped to his body. And the
15 other case, it was a suitcase involving cocaine that he
16 admits was heavy and knew something was in there. But
17 his testimony was that he had no direct knowledge that
18 it was cocaine.

19 I think they are distinguishable. I recognize
20 the jury has already been charged. The only reason I
21 bring this up, your Honor, is that in the event -- I
22 think it is possible the jury may again request a
23 charge on knowledge. I would ask the Court if that
24 happens to merely charge them that the government must
25 prove beyond a reasonable doubt that the defendants

1 had actual knowledge.

2 I said my peace.

3 THE COURT: You are anticipating something that
4 may never occur.

5 MR. O'BRIEN: True. It may never occur. But
6 if it does occur, I want the Court to be persuaded
7 that you should charge as I ask.

8 THE COURT: I think my charge was correct.

9 MR. VERDIRAMO: I join in that.

10 THE COURT: If the Court of Appeals disagrees,
11 they disagree.

12 MR. O'BRIEN: I hope I never have to go to the
13 Court of Appeals and find out.

14 MR. VERDIRAMO: Can we go to lunch.

15 THE COURT: No. 1:00 o'clock.

16 What time did you order lunch for them?

17 DEPUTY MARSHAL: 12:30, quarter to 1:00.

18 THE COURT: All right. When their lunch
19 arrives, let the jurors know that I will let the
20 lawyers go for an hour after that.

21 MR. CORBETT: I believe the lunch has arrived.

22 THE COURT: Has it?

23 THE CLERK: That was coffee.

24 MR. CORBETT: Oh, I am sorry.

25 THE COURT: All right.

1 (Recess taken.)

2 THE COURT: All right, they want the
3 explanation of one, the charge of conspiracy, and two,
4 the charge of possession.

5 I told you you are anticipating something that
6 wouldn't occur, Mr. O'Brien.

7 MR. SPERLING: He knew.

8 THE COURT: He didn't know. He guessed wrong.
9 Will you mark that Court Exhibit No. 3.

10 THE CLERK: Juror's note received as Court
11 Exhibit 3.

12 THE COURT: All right, we will give them a
13 rereading of the charge of conspiracy and a rereading
14 of the charge of possession.

15 (Whereupon, the jury entered the jury box.)

16 THE COURT: I have your note, ladies and
17 gentlemen. I am going to take it literally based on
18 the wording of it. I am going to read to you first
19 the charge with respect to possession.

20 Now, this has nothing to do with knowledge. I
21 am just going to read to you the charge with respect
22 to possession. If you want further instructions on
23 this question, of course, you will have to ask.

24 But on the question of possession and possession
25 alone, I charged you as follows:

1 The law recognizes two kinds of possession:

2 Actual possession and constructive possession. A
3 person who knowingly has direct physical control over
4 a thing, at a given time, is then in actual possession
5 of it.

6 A person who, although not in actual possession,
7 knowingly has both the power and the intention, at a
8 given time, to exercise dominion or control over a
9 thing, either directly or through another person or
10 persons, is then in constructive possession of it.

11 The law recognizes also that possession may be
12 sole or joint. If one person alone has actual or
13 constructive possession of a thing, possession is
14 sole. If two or more persons share actual or
15 constructive possession of a thing, possession is
16 joint.

17 You may find that the element of possession as
18 that term is used in these instructions is present if
19 you find beyond a reasonable doubt that the defendant
20 had actual or constructive possession, either alone or
21 jointly with others.

22 An act or failure to act is "knowingly" done,
23 if done voluntarily and intentionally, not because of
24 mistake or accident or other innocent reason.

25 Now, in connection with the question of

1 possession I also read to you the aiding and abetting
2 section of the statute. The aiding and abetting
3 section. And I gave you certain instructions with
4 respect to aiding and abetting which, since you
5 haven't asked for it, I am not going to read to you
6 again. But if you want them, of course, you may have
7 them read.

8 On the question of conspiracy, that is a little
9 longer. I will not reread the indictment on the
10 conspiracy charge. However, I will read the balance
11 of it to you.

12 Section 371 of Title 18 of the United States
13 Code provides in pertinent part that:

14 "If two or more persons conspire ... to commit
15 any offense against the United States ... and one or
16 more of such persons do any act to effect the object
17 of the conspiracy, each ..." is guilty of an offense
18 against the United States.

19 The following are the essential elements which
20 are required to be proven beyond a reasonable doubt
21 in order to establish the offense of conspiracy
22 charged in this indictment.

23 One. That there was an agreement or conspiracy
24 between two or more persons to violate the law as
25 charged in the indictment;

1 Two. That the conspiracy described in the
2 indictment was willfully formed and existed at or about
3 the time alleged;

4 Three. That the conspiracy was so willfully
5 formed and existing for the purpose of receiving and
6 having in the possession of one or more conspirators
7 cartons of Timex watches which had been embezzled,
8 stolen or unlawfully taken, carried away or concealed
9 from an aircraft, air terminal, airport, aircraft
10 terminal, or air navigational facility which cartons
11 had been moving as a part of or which constituted a
12 foreign shipment of freight, express or other property,
13 the accused knowing the same to have been stolen;

14 Four. That the accused willfully became a
15 member of the conspiracy;

16 Five. That one of the conspirators thereafter
17 knowingly committed one of the overt acts charged in
18 the indictment at or about the time and place alleged;

19 Six. That such overt act was knowingly done
20 in furtherance of the object of the conspiracy as
21 charged; and

22 Seven. That the accused was knowingly and
23 willfully a member of the conspiracy with the intent
24 to further one of its objectives.

25 If the jury should find beyond a reasonable

82a

1 doubt from the evidence in the case that existence of
2 the conspiracy charged in the indictment has been
3 proved, and that during the existence of the conspiracy
4 one of the overt acts alleged was knowingly done by one
5 or more of the conspirators in furtherance of some
6 object or purpose of the conspiracy. Then proof of the
7 conspiracy offense charged is complete.

8 A conspiracy is a combination of two or more
9 persons, by concerted action, to accomplish some
10 unlawful purpose. So, a conspiracy is a kind of
11 "partnership in criminal purposes," in which each
12 member becomes the agent of every other member. The
13 gist of the offense is a combination or agreement to
14 disobey, or to disregard the law.

15 Here similarity of conduct among various persons,
16 and the fact they may have associated with each other,
17 and may have assembled together and discussed common
18 aims and interests, does not necessarily establish
19 proof of the existence of a conspiracy.

20 However, the evidence in the case need not show
21 that the members entered into any express or formal
22 agreement, or that they directly, by words spoken or
23 in writing, stated between themselves that their object
24 or purpose was to be, or the details thereof, or the
25 details thereof, or the means by which the object or

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1 purpose was to be accomplished.

2 What the evidence in the case must show beyond
3 a reasonable doubt, in order to establish proof that
4 a conspiracy existed, is that the members in some way
5 or manner, or through some contrivance, positively or
6 tacitly came to a mutual understanding to try to
7 accomplish a common and unlawful plan.

8 The evidence in the case need not establish that
9 all the means or methods set forth in the indictment
10 were agreed upon to carry out the alleged conspiracy;
11 nor that all means or methods which were agreed upon
12 were actually used or put into operation; nor that all
13 of the persons charged to have been members of the
14 alleged conspiracy were such. What the evidence in the
15 case must establish beyond a reasonable doubt is that
16 the alleged conspiracy was knowingly formed, and that
17 one or more of the means or methods described in the
18 indictment were agreed upon to be used in an effort to
19 effect or accomplish some object or purpose of the
20 conspiracy, as charged in the indictment; and that two
21 or more persons, including one or more of the accused
22 were knowingly members of the conspiracy, as charged in
23 the indictment.

24 In your consideration of the evidence in the
25 case as to the offense of conspiracy charge, you should

1 first determine whether or not the conspiracy existed,
2 as alleged in the indictment. If you conclude that
3 the conspiracy did exist, you should next determine
4 whether or not each of the accused willfully became a
5 member of the conspiracy.

6 If it appears beyond a reasonable doubt from the
7 evidence in the case that the conspiracy alleged in
8 the indictment was willfully formed, and that a
9 defendant lawfully became a member of the conspiracy
10 either at its inception or afterwards, and that there-
11 after one or more of the conspirators committed one or
12 more overt acts in furtherance of some object or purpose
13 of the conspiracy, then there may be a conviction even
14 though the conspirators may not have succeeded in
15 accomplishing their common object or purpose and in
16 fact may have failed so doing.

17 The extent of any defendant's participation,
18 moreover, is not determinative of his or her guilt or
19 innocence. A defendant may be convicted as a
20 conspirator even though he or she may have played only a
21 minor part in the conspiracy.

22 Merely because the evidence shows that any of
23 the defendants knew or were acquainted with other
24 parties to this matter is not in and of itself and
25 without more proof of any defendant's guilt or his or

1 her participation in the alleged conspiracy. Each
2 defendant must be judged upon the evidence with respect
3 to him or her, not solely upon whom he or she knew or
4 with whom he or she associated.

5 An "overt act" is any act knowingly committed by
6 one of the conspirators, in an effort to effect or
7 accomplish some object or purpose of the conspiracy.
8 The overt act need not be criminal in nature, if
9 considered separately and apart from the conspiracy.
10 It may be as innocent as the act of a man walking
11 across the street or driving an automobile, or using
12 a telephone. It must, however, be an act which follows
13 and tends towards accomplishment of the plan or scheme;
14 it must be knowingly done in furtherance of some object
15 or purpose of the conspiracy charged in the indictment.
16 It is not necessary that all of the overt acts charged
17 in the indictment were performed. One overt act is
18 sufficient.

19 (Continued next page.)
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JB:jk
3AM R2

1 THE COURT: (Continuing) One may become a
2 member of the conspiracy without full knowledge of
3 all the details of the conspiracy. On the other hand,
4 a person who has no knowledge of a conspiracy, but
5 happens to act in a way which furthers some object or
6 purpose of the conspiracy, does not thereby become a
7 conspirator.

8 Before the jury may find one or more or all of
9 the defendants or any other person has become a member
10 of the conspiracy, the evidence in the case must show
11 beyond a reasonable doubt that the conspiracy was
12 knowingly formed and that the particular defendant or
13 other person who has been claimed to have been a
14 member, willfully participated in the unlawful plan,
15 with the intent to advance or further some object or
16 purpose of the conspiracy.

17 To act or participate willfully means to act
18 or participate voluntarily or intentionally and with
19 specific intent to do something the law forbids...that
20 is to say, to act or participate with the bad purpose
21 either to disobey or to disregard the law. So, if a
22 defendant or any other person, with understanding of
23 the unlawful character of the plan, knowingly
24 encourages, advises or assists, for the purpose of
25 furthering the undertaking or the scheme, he or she
thereby

2 1 becomes a willful participant -- a conspirator. 1529

2 One who willfully joins in an existing
3 conspiracy is charged with the same responsibility as
4 if he or she had been one of the originators or in-
stigators of the conspiracy.

6 In determining whether a conspiracy existed,
7 the jury should consider the actions and the
8 declarations of all the alleged participants. However,
9 in determining whether a particular defendant was a
10 member of a conspiracy, the jury should consider only
11 his or her acts and statements. He or she cannot be
12 bound by the acts or declarations of other participants
13 until it is established that a conspiracy existed, and
14 that he or she was one of the members.

15 Whenever it appears beyond a reasonable doubt
16 from the evidence in the case that a conspiracy
17 existed, and that a defendant was one of the members,
18 then the statements thereafter knowingly made and the
19 acts knowingly done, by any person likewise found to
20 be a member, may be considered by the jury as evidence
21 in the case as to the defendant found to have been a
22 member, even though the statements and acts made may
23 have occurred in the absence and without the knowledge
24 of the defendant, provided such statements and acts
25 were knowingly and done during the continuancy

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2 of such conspiracy, and in furtherance of some object
3 or purpose of the conspiracy.

4 Otherwise, any admission or incriminatory
5 statement made or act done outside of court, by one
6 person, may not be considered as evidence against any
7 person who was not present and did not hear the
8 statement made or see the act done.

9 Therefore, statements of any conspirator which
10 are not in furtherance of the conspiracy or made
11 before its existence or after its termination may be
12 considered as evidence only against the person making
13 them.

14 Now, the indictment charges a conspiracy among
15 the twelve defendants and Barbara Carson, who is not
16 a defendant, all of whom are named in the indictment
17 as co-conspirators. A person cannot conspire with
18 himself or herself, and, therefore, you cannot find
19 any of the defendants guilty unless you find beyond
20 a reasonable doubt that he participated in the con-
21 spiracy as charged with at least one other person.
22 With this qualification, you may find all of the de-
23 fendants guilty or some of the defendants guilty and
24 some not guilty, or all not guilty, all in accordance
25 with these instructions and the facts which you find.

Those are the instructions on possession and

conspiracy.

1531

Has your lunch arrived?

DEPUTY MARSHAL: Yes.

THE COURT: Well, unless you have some other questions you think you are going to have immediately, I would propose to let the attorneys go and have them come back at two o'clock and let you eat your lunch. So hold your notes until then.

Do you want to take a couple of minutes to see whether you have any immediate questions? Why don't you go? If we don't receive a note from you in the next two or three minutes, I will let them go to lunch.

(Whereupon, the jury retired from the courtroom.)

MR. O'BRIEN: I would appreciate it if your Honor would refrain from mentioning any other elements or any other instructions that you have given to the jury.

For example, your Honor said that in connection with the possession, "I read the aiding and abetting statute."

THE COURT: You may appreciate it or not, as you wish. And I did. And I specifically called their attention to it in the main charge. So under

1 the circumstances I called it to their attention at
2 this juncture. The same as I did in the main charge,
3 I read Mr. Verdiramo's request with respect to
4 conspiracy. And in this charge I read Mr. Verdiramo's
5 instructions.

6 I am not here to mislead the jury. I am here
7 to make sure they understand it.

8 MR. O'BRIEN: Your Honor, I am not here to
9 mislead the jury or mislead the Court or to do
10 anything other than to protect a client that the
11 Court appointed me to represent. And I do that to
12 the best of my ability. And I think your Honor is
13 misinterpreting what I am saying.

14 What I do object to -- and I will give you the
15 specific reason. Your Honor did mention the charge
16 of knowledge. Now, I don't want that charge read.
17 Of course, if the jury requests that charge, then
18 your Honor has to.

19 THE COURT: Knowledge and possession are inter-
20 related in the case. And I wanted to make sure that
21 they understand what they are getting when I read
22 them solely on the question of possession. You've
23 got to remember that the jurors are not lawyers.
24 And jurors may want something other than what they
25 write down.

1 MR. O'BRIEN: Well, I would request that we
2 wait until they write it down.

3 THE COURT: They just requested something.

4 "No more information needed."

5 MR. O'BRIEN: Oh, thank God.

6 THE CLERK: Juror's note received as Court
7 Exhibit 4.

8 THE COURT: All right.

9 (Luncheon recess.)
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A 201 Affidavit of Service by Mail

LUTZ APPELLATE PRINTERS, INC.

**COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**UNITED STATES OF AMERICA,
Plaintiff- Appellee.**

- against -

**JAMES GRIMSLEY,
Defendant- Appellant.**

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Velma N. Howe being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
298 Macon Street, Brooklyn, New York 11216

That on the 28th day of June 1976, deponent served the annexed **JOINT**

APPENDIX upon **David Trager** attorney(s) for

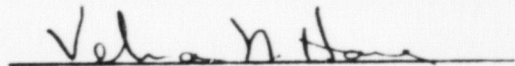
Plaintiff- Appellee in this action, at 225 Cadman Plaza, Brooklyn, New York

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 28th
day of June 19 76



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York State



VELMA N. HOWE